

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. 05-0301-CV-W-HFS
)
BASIL L. NORTH, JR., et al.,)
)
Defendants.)

MEMORANDUM TO THE PARTIES

In this tax collection case the United States filed its motion for summary judgment on March 7, 2006 (Doc. 19). Defendant North has filed no response in opposition.

The motion for summary judgment is based on admissions in the answer. (Doc. 11). An examination of the answer also discloses certain conclusory denials. These include questions about claims of other parties. (Paragraphs 9 and 11). There is also a conclusory denial of indebtedness in the amount of \$1,346,987.30 and supplemental obligations from October 4, 2004 and of a right to foreclose to satisfy the unpaid balance. (Paragraphs 18 and 23). Enough is admitted in the answer, however, to support the motion for summary judgment, as the details recited in the Government's suggestions demonstrate.* If there is some deficiency in the Government's recitation

*If the several denials in the answer were to be reconciled with the admissions, one can imagine that if defendant claims he made partial payment he could deny he still owes the full obligation. Payment is, however, an affirmative defense that must be pled and defendant cannot rely on such a theory. Rule 8, F. R. Civ. Proc. The Government might have had a tighter record if it had alleged no payments have been made, or offered an affidavit in support of its motion to that effect. The record would then have been a bit more comprehensive, but I think it is sufficient.

it is the obligation of a party intending to resist summary judgment to call that to the attention of the court. That has not been done.

It is therefore the intention of the court to grant the motion for summary judgment early next week and to enter judgment as prayed. Although months out of time, the court would review any objections by defendant, if immediately filed.

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

September 21, 2006

Kansas City, Missouri